



UNITED STATES DEPARTMENT OF COMMERCE  
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SERIAL NUMBER	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
07/542,149	06/22/90	KEITH	J

EXAMINER
LOW, C

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ART UNIT	PAPER NUMBER
184	2

DATE MAILED: 04/01/91

This is a communication from the examiner in charge of your application.  
COMMISSIONER OF PATENTS AND TRADEMARKS

*for restriction*

☒ This application has been examined ☐ Responsive to communication filed on \_\_\_\_\_ ☐ This action is made final.

A shortened statutory period for response to this action is set to expire 0 month(s), 30 days from the date of this letter.  
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892.        | 2. <input type="checkbox"/> Notice re Patent Drawing, PTO-948.                  |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449.             | 4. <input type="checkbox"/> Notice of Informal Patent Application, Form PTO-152 |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____   |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-4 are pending in the application.  
Of the above, claims: none are withdrawn from consideration.
2. ☐ Claims \_\_\_\_\_ have been cancelled.
3. ☐ Claims \_\_\_\_\_ are allowed.
4. ☐ Claims \_\_\_\_\_ are rejected.
5. ☐ Claims \_\_\_\_\_ are objected to.
6. ☒ Claims 1-4 are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on \_\_\_\_\_. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on \_\_\_\_\_, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed \_\_\_\_\_, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. \_\_\_\_\_; filed on \_\_\_\_\_.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

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Restriction to one of the following inventions is required under 35

U.S.C. 121:

- I. Claim 1, drawn to a cloned gene encoding pertussis toxin would for example be classified in Classes 435 and 536, subclasses 91 and 27 respectively.
- II. Claims 2 to 4, drawn to an antigenic mutant pertussis toxin (i.e. a polypeptide) and pharmaceutical composition would for example be classified in Class 530, subclass 350, Class 424, subclasses 88 and 92, Class 514, subclass 12.

The inventions are distinct, each from the other because of the following reasons:

The inventions of Group I and II are capable of separate manufacture, use, and have different properties as claimed and are patentably distinct. The pertussis gene of Group I can be obtained by traditional chemical synthesis and is useful as a genetic probe. The polypeptides of Group II can be obtained by traditional solid phase chemical synthesis and thus do not have to be obtained via a process requiring recombinant DNA or any other biological route to obtaining the protein.

Because these inventions are distinct for the reasons given above and since they have acquired a separate status in the art as shown by their different classification, subject matter, and become separately and independently searchable, restriction for examination purposes as indicated is proper.

Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed.

A telephone call was made to Robert Benson 14 March 1991 to request an oral election to the above restriction requirement, but did not result in an election being made.

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An inquiry concerning this communication should be directed to  
Christopher Low at telephone number (703) 308-0196.

*CSN*  
CSF Low  
14 March 1991

*Elizabeth C. Weimar*  
ELIZABETH C. WEIMAR  
SUPERVISORY PATENT EXAMINER  
ART UNIT 184